

DETAILED ACTION

Note Requested by Applicant

1. The applicant filed a request for continued examination (RCE) on January 30, 2008. A phone call was made to the examiner on February 12, 2008, to request a phone interview to discuss the amendments made in the RCE in order to further prosecution. The applicant had clearly indicated willingness to agree on accepted claim language to further prosecution in a convenient and expedient manner. The interview was conducted on February 29, 2008 with Michael Cleveland and Joy Watson representing the USPTO and Mark Saralino and Larry Drasner representing the applicant. During the course of the interview applicant proposed amendments to further prosecution. Applicant was told that there would not be given an opportunity to file an additional amendment since the case was in condition for action by the examiner and because applicant's proposed supplemental amendment would not have been clearly limited to one of the situations listed in 37 CFR 1.111.(a)(2)(i).

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 30, 2008, has been entered.

Response to Arguments

3. Applicant's arguments filed January 30, 1008, have been fully considered but they are not persuasive.

4. In response to applicant's argument that the control portion controls the wash cycle includes washing, rinsing and draining the articles within the washing machine, the examiner takes official notice that an automatic washing machine, as discussed in Totterdell, includes a controller that controls performing the washing, rinsing and draining of the washing machine as evidenced by Choi (US Patent 5,795,052 col. 1 lines 36-45).

5. In response to applicant's statement that the prescribed time period "is not required to be calculated by the controller (p. 8 of 13 first full paragraph), the examiner notes that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)

6. In response to applicant's argument that the combination of Totterdell and Ohsugi do not teach "the control portion still in configured in accordance with the

Art Unit: 1792

prescribed time.” (page 8 of 13 end of second to last paragraph), the examiner notes that Ohsugi teaches a pressure switch which detects a water level in a washing tub (col. 3 lines 62-64) and a power source switch that is in the off condition after about five minutes from the finish of all washing processes (col. 6 lines 5-10) in order to conserve energy. Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of turning off the power supply to the washing machine (thus inherently turning off power to the controller) after the washing operation is completed as taught by Ohsugi to improve the washing machine of Totterdell for the predictable result of detecting water with the water detecting unit for a prescribed period of time then turning the control portion off.

7. In response to applicant’s argument that the configuration of the control portion is structural (page 9 of 13 lines 1-6), the examiner notes that Totterdell teaches a washing machine, including a drum (3) having an axis of rotation in a direction crossing a vertical direction and a water tank (2) surrounding said drum (p. 3 lines 25-30) comprising: a water level detecting unit detecting level of water in said water tank (p. 2 lines 12-29); a water feed unit (5) for feeding water to said water tank (p. 3 lines 33-34); and a control portion operating said washing machine for washing (p. 4 lines 6-9); it does not teach that the control portion detects the water level for a prescribed time period and hereafter turns off the power supply. Ohsugi teaches a pressure switch which detects a water level in a washing tub (col. 3 lines 62-64) and a power source switch that is in the off condition after about five minutes from the finish of all washing processes (col. 6 lines 5-

Art Unit: 1792

10) in order to conserve energy. Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of turning off the power supply to the washing machine (inherently turning off power to the controller) after the washing operation is completed as taught by Ohsugi to improve the washing machine of Totterdell for the predictable result of detecting water with the water detecting unit for a prescribed period of time then turning the control portion off. However, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of Totterdell and Ohsugi are capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by Totterdell and Ohsug, and no such structural distinction is apparent.

8. Regarding the recitation “said control portion operating said washing machine for performing a wash cycle including washing, rinsing, and draining” (page 9 of 13 last paragraph), this recitation is a statement of intended use which does not patentably distinguish over Totterdell and Ohsugi since Totterdell and Ohsugi meet all the

Art Unit: 1792

structural elements of the claim(s) and is capable of "said control portion operating said washing machine for performing a wash cycle including washing, rinsing, and draining" if so desired. See MPEP 2114.

9. In response to applicant's argument that Totterdell and Ohsugi are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Totterdell and Ohsugi teach monitoring liquid levels inside the tub of a washing machine as claimed by applicant. One would be motivated to use known techniques of detecting water levels and other features of washing machines in order to perform applicant's claimed invention.

10. In response to applicant's argument that Dirnberger fails to teach a lock unit responding to water leakage from the water feed unit (page 11 of 13 last full paragraph), the examiner notes that, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the

apparatus of Totterdell, Ohsugi and Dirnberger is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by Totterdell, Ohsugi and Dirnberger, and no such structural distinction is apparent.

11. In response to applicant's argument that the amendments of January 30, 2008, distinguish the claimed invention from the device of Baubin (page 12 of 13 middle of the page), the examiner respectfully disagrees. However, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of Totterdell, Ohsugi, Babuin and Nakamura is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by Totterdell, Ohsugi, Babuin and Nakamura, and no such structural distinction is apparent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trotterdell (EP '0028067, hereafter '067) and Ohsugi et al. (US Patent 4,955,213 known hereafter as '213).

Claim 1

'067 teaches:

An automatic washing machine (p. 3 lines 25-31), including a drum (3) having an axis of rotation in a direction crossing a vertical direction and a water tank (2) surrounding said drum (p. 3 lines 25-30) comprising: a water level detecting unit detecting level of water

Art Unit: 1792

in said water tank (p. 2 lines 12-29); a water feed unit (5) for feeding water to said water tank (p. 3 lines 33-34); and a control portion operating said washing machine for washing, rinsing and draining (p. 4 lines 6-21). Additionally the examiner takes official notice that one of ordinary skill in the art at the time of the invention would have known that an automatic washing machine includes a controller that controls performing washing, rinsing and draining of the washing machine. It does not teach that the control portion detects the water level for a prescribed time period and thereafter turns off the power supply. '213 teaches a pressure switch which detects a water level in a washing tub (col. 3 lines 62-64) and a power source switch that is in the off condition after about five minutes from the finish of all washing processes (col. 6 lines 5-10) in order to conserve energy. At the time of the invention to one of ordinary skill in the art would have been motivated to program the control portion of '067 to switch the power source of '213 to the "off" position in order to conserve energy while the machine was not in use. A prescribed "time period set in accordance with a time period calculated from a minimum flow rate of water fed from said water feed unit and a smallest amount of water detectable by said water level detecting unit" is not required to be calculated by the controller. The time period could be entered manually and therefore not a feature of the apparatus nor does it further limit the apparatus claim. The time period is a feature of the use of the apparatus. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177

Art Unit: 1792

USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067 and '213 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067 and '213, and no such structural distinction is apparent.

Claim 3

Claim 3 is rejected as taught in Claim 1 and in further view of '067 which additionally teaches a washing machine, including a drum having an axis of rotation in a direction crossing a vertical direction and a water tank surrounding said drum (p. 3 lines 25-30); wherein said water tank has an opening in a plane crossing said axis of rotation; said washing machine comprising: a door opening and closing said opening of said water tank (only figure, item number 4; p. 3 lines 31); a water feed unit for feeding water to said water tank (p. 3 line 33); a water leakage detecting unit monitoring water leakage at said water feed unit and detecting the water level in said water tank (p. 2 lines 12-29, p. 3 lines 12-16, by applicants admission on page 5 lines 20-28 of the Specification the water leakage detecting unit can include the "sensor providing a signal indicative of level of liquid in the tub); and a control portion operating said washing machine for washing; wherein when said operation for washing is completed, said control portion

Art Unit: 1792

causes said leakage detecting unit to monitor water leakage at said water feed unit only for a prescribed time period, and thereafter power supply to said control portion is turned off which not taught by '067, but rendered obvious by '213 for the same reasons as Claim 1. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067 and '213 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067 and '213, and no such structural distinction is apparent.

14. Claims 5, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over '067 and '213 and in further view of Dirnberger et al. (US Patent 6,840,553 known hereafter as '553).

Claim 5

Art Unit: 1792

'067 and '213 teach the features of Claim 3, a level sensor and transmitter, and '067 further teaches that flooding can occur because of a washing machine malfunction (p. 2 lines 1-10). It does not teach

a lock unit for preventing opening of said door;

wherein said control portion causes said lock unit to lock said door when said leakage detecting unit detects water leakage at said water feed unit.

But '553 teaches a lock for preventing opening of a washing machine door and a controller to control the lock when opening the door would cause water to escape (col. 4 lines 48-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have added the lock and controller of '553 to the washing machine of '067 to have prevented flooding. In such a system it would have been obvious to one of ordinary skill in the art at the time of the invention to have had the level sensor of '067 provide feedback to the controller of '553 because the water height would have been an indicator of whether the machine would overflow. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213 and '553 is capable of being configured to perform the functions as described in applicants claims,

Art Unit: 1792

the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

Claim 8

Art Unit: 1792

'067 teaches:

A washing machine, including a drum having an axis of rotation in a direction crossing a vertical direction and a water tank surrounding said drum (p. 3 lines 25-30) comprising: a water level detecting unit detecting level of water in said water tank (p. 2 lines 12-29); a water feed unit (5) for feeding water to said water tank (p. 3 lines 33-34); a door (4) opening and closing said opening of said water tank and a control portion operating said washing machine for washing (p. 4 lines 6-9);

It does not teach wherein when said operation for washing is completed, said control portion which causes said water level detecting unit to detect water level in said water tank only for a prescribed time period, and thereafter power supply to said control portion is turned off nor does it teach a lock unit for locking said door.

'213 teaches a control portion which causes said water level detecting unit to detect water level in said water tank only for a prescribed time period, and thereafter power supply to said control portion is turned off as discussed in Claim 1. Additionally '553 teaches a lock unit for locking said door as discussed in Claim 5. At the time of the invention one of ordinary skill in the art would have been motivated to combine these inventions in order to prevent the water from escaping the washing machine. When these two inventions are combined the result is a washing machine that will detect multiple water levels. When the water is at or below the lowest detectable level the door will unlock the door. After the prescribed time period the control portion will turn off from

Art Unit: 1792

the teaching of '213 (col. 6 lines 5-10). A prescribed "time period set in accordance with a time period calculated from a minimum flow rate of water fed from said water feed unit and a smallest amount of water detectable by said water level detecting unit" is not required to be calculated by the controller. The time period could be entered manually and therefore not a feature of the apparatus nor does it further limit the apparatus claim. The time period is a feature of the use of the apparatus. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213 and '553 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

Claim 10

Art Unit: 1792

Claim 10 is rejected under the teachings of Claim 8. It would have been obvious to one skilled in the art at the time of the invention that if a door to a washing machine was locked that after the machine was finished washing the door would have to open and unlock in order to remove its contents. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213 and '553 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

15. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over '067 in view of '213 and '553 as applied to Claim 5 and further in view of Babuin (US Patent

Art Unit: 1792

4,696,171 hereafter '171) and Nakamura et al (US Patent 5,000,015 known hereafter as '015).

Claim 6

'067 and '213 teach the features of Claim 5 as discussed above. '067 teaches a drainage unit for draining the water in the tank (p. 3 lines 32-34), and a water leakage detecting unit (p. 2 lines 12-19, p. 3 lines 12-16) as discussed in Claim 4. '067 does not teach a lock detecting unit nor responding to a pressure switch (or level sensor) that indicates overflow by draining washing liquid from the wash tub. '533 teaches a lock as discussed in Claim 5, but does not teach sensors to determine if the door is locked on not. '015 also teaches a lock and a lock detecting unit (col. 13 lines 60-67). At the time of the invention to one of ordinary skill in the art would have known to combine the drainage unit and leak detecting unit of '067 and '213 with the lock detecting unit of '015 in order to ensure the door was locked properly and not malfunctioning in order to prevent flooding. '171 teaches responding to a pressure switch (or level sensor) that indicates overflow by draining washing liquid from the wash tub (col. 11 lines 56-67). At the time of the invention to one of ordinary skill in the art it would have been obvious to use a leakage detecting unit that detects a high water level that would tell the control portion to open the drain line in combination with a lock and lock detecting unit in order to have prevented overflow. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2

Art Unit: 1792

USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213, '553, '015 and '171 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

Claim 7

Claim 7 is rejected as taught in Claim 6 and after further review of '015. '015 teaches that if the door is not able to be locked a sensor detects that the lid is open and a buzzer indicates trouble with the lid (col. 13 lines 60-67). One of ordinary skill in the art at the time of the invention would have known to use the buzzer of '015 with the lock and lock detecting unit discussed in Claim 6 to alert the user of the washing machine that the door lock was malfunctioning so that the user could take the proper steps to fix the door lock in order to use the washing machine properly. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028,

Art Unit: 1792

1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213, '553, '015 and '171 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

16. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over '067, '213 and '553 as applied to Claim 8 and further in view of '015.

Claim 11

'067, '213 and '553 teach the limitations of Claim 8. They do not teach a lock detection unit. '015 teaches the lock detecting unit. Combining '067, '213 and '553 with '015 renders obvious for the reasons given above regarding Claims 6-7. When these inventions are combined the result is a washing machine that will detect multiple water levels. When the water is above the first water level the drain will open if the door is not locked, and if water is not detected (because it is below the first level) the control portion will turn off. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA

Art Unit: 1792

1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213, '553 and '015 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213, '553 and '015, and no such structural distinction is apparent.

Claim 12

Claim 12 is rejected because of the teaching of Claim 11 and additionally because of further review of '015 (col. 13 lines 60-68) as discussed in Claim 7.

Claim 13

Additionally '067 teaches a drainage unit (p.3 lines 32-34) and that after washing is completed and the water is between the first sensor (switch 12) and second sensor the control system tells the drainage system to drain the water tank (p. 5 lines 7-25).

Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*,

Art Unit: 1792

370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213, '553 and '015 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213, '553 and '015, and no such structural distinction is apparent.

17. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over '067, '213, '553, '015 and further in view of Kronbetter et al. (US Patent 6,256,823 known hereafter as '823).

Claim 14

Claim 14 is rejected as taught in Claim 13 and in further review '067 which teaches a washing machine with multiple level detectors. It does not teach a relationship between the position of the level detectors and the height of the door. '823 teaches "water level is positioned lower than a lowermost plane of said opening of said water tank." (Figure 2, col. 3 lines 50-57) where there are multiple water levels possible in the water tank. At the time of the invention it would be obvious to one skilled in the art that one would be motivated to prevent water from escaping the washing machine as taught in '823 and therefore the height of the level detectors with respect to the door could be incorporated into the invention discussed in Claim 13.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOY WATSON whose telephone number is (571)270-1267. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W./
Examiner, Art Unit 1792

/Michael Cleveland/
Supervisory Patent Examiner, Art Unit 1792